

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of:

No. 10F-BD008-BNK

3 **TAYLOR, BEAN & WHITAKER MORTGAGE**
4 **CORP. AND LEE B. FARKAS, OWNER**

CONSENT ORDER

4 315 NE 14th Street
5 Ocala, Florida 34470,

6 Petitioners.

7 On October 28, 2009, the Arizona Department of Financial Institutions ("Department") issued a
8 Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this matter in
9 lieu of an administrative hearing and without admitting liability, Petitioners do not contest the following
10 Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

11 FINDINGS OF FACT

12 1. Petitioner Taylor, Bean & Whitaker Mortgage Corp. ("TB&W") is a Florida corporation
13 authorized to transact business in Arizona as a mortgage banker, license number BK 0903838, within
14 the meaning of A.R.S. §§ 6-941, *et seq.* The nature of TB&W's business is that of making, negotiating,
15 or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by Arizona real
16 property within the meaning of A.R.S. § 6-941(5).

17 2. Petitioner Lee B. Farkas ("Mr. Farkas") directly owns seventy nine and one tenth percent
18 (79.1%) of TB&W and is authorized to transact business in Arizona as a mortgage banker within the
19 meaning of A.R.S. § 6-941(5), as outlined within A.R.S. § 6-943(F).

20 3. TB&W and Mr. Farkas are not exempt from licensure as mortgage bankers within the
21 meaning of A.R.S. §§ 6-942 and 6-941(5).

22 4. On August 4, 2009, the Department of Housing and Urban Development issued a news
23 release ("News Release") that the Federal Housing Administration ("FHA") had suspended TB&W from
24 originating and underwriting loans insured by the FHA.

1 5. The News Release further stated that the Government National Mortgage Association
2 ("Ginnie Mae") defaulted and terminated TB&W as an issuer of its Mortgage-Backed Securities
3 program and ended TB&W's ability to continue servicing Ginnie Mae securities.

4 6. According to the News Release, the FHA and Ginnie Mae took their respective actions
5 because TB&W "failed to submit a required annual financial report and misrepresented that there were
6 no unresolved issues with its independent auditor" despite "irregular transactions that raised concerns of
7 fraud." Also according to the News Release, the FHA also based its action on the fact that TB&W
8 failed to disclose that it was the subject of two (2) examinations involving its business practices.

9 7. In a letter dated August 4, 2009, the Federal Home Loan Mortgage Corporation ("Freddie
10 Mac") informed TB&W that it was immediately terminating TB&W's eligibility "to sell mortgage loans
11 to and service mortgage loans for" Freddie Mac.

12 8. On August 5, 2009, TB&W issued a press release stating that due to the suspension and
13 termination by the FHA, Ginnie Mae and Freddie Mac, they would immediately be ceasing the
14 origination of mortgage loans, and had become unable to close or fund any mortgage loans.

15 9. On August 6, 2009, during a telephone call, TB&W's general counsel represented that
16 TB&W is unable to fund any loans in accordance with agreements they have entered into with Arizona
17 consumers.

18 10. Also on August 6, 2009, TB&W provided to the Department a list of loans relating to
19 Arizona properties that had been approved, but not yet funded.

20 11. On August 6, 2009, the Deputy Secretary for Nondepository Financial Institutions
21 Consumer Services in Pennsylvania sent two (2) e-mails to TB&W's general counsel, requesting
22 information on behalf of all state regulators and seeking responses to some of those requests by close of
23 business August 6, 2009 or August 7, 2009. To date, TB&W is updating information provided to state
24 regulators.

25 12. On August 11, 2009, TB&W's counsel confirmed that all of TB&W's funding lines had
26 been frozen or terminated, and TB&W is without means to fund any closed loans.

13. Several state agencies, including Pennsylvania, New Jersey, Washington, Florida and Maryland have entered adverse administrative orders against Petitioner TB&W, based on the facts alleged above, as well as alleged violations of those states' laws involving deceptive acts or misrepresentation regarding TB&W's ability to fund closed mortgage loans and disburse monies as agreed.

14. As of August 12, 2009, TB&W's website homepage did not alert consumers to the fact that TB&W has ceased loan origination activity, although current borrowers with TB&W were able to obtain certain information with their log-in capacity.

15. Based upon the above findings, the Department issued and served upon Petitioners an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order ("Cease and Desist Order") on August 20, 2009.

16. On September 16, 2009, the Department received Petitioners' Request for Hearing to appeal the Cease and Desist Order.

17. To date, TB&W is connected with thirty eight (38) mortgage loans regarding Arizona properties.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage banker business and with the enforcement of statutes, rules, and regulations relating to mortgage bankers.

2. By the conduct set forth in the Complaint, Taylor, Bean & Whitaker Mortgage Corp. and Mr. Farkas violated A.R.S. § 6-947(M), by failing to disburse monies in accordance with their agreements with consumers and failing to fund closed mortgage loans.

3. A number of other states have entered orders against TB&W for deceitful actions and misrepresentations, the alleged facts of which indicate it may be contrary to the interest of the public to permit Petitioners' continued licensure, which is grounds for the suspension or revocation of Petitioners' mortgage banker license pursuant to A.R.S. § 6-945(A)(6).

4. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; (4) an order to pay restitution of any fees earned on loans made in violation of A.R.S. §§ 6-941, *et seq.*, pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131.

5. Pursuant to A.R.S. § 6-132, Petitioners' violations of the aforementioned statutes are grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

ORDER

1. Taylor, Bean & Whitaker Mortgage Corp. shall continue the winding down of its business operations in the state of Arizona and such operations shall be terminated by December 31, 2009, the date on which TB&W's license expires. TB&W's association with the remaining thirty eight (38) net-funded loans shall cease as soon as practicable and after December 31, 2009, TB&W shall act in accordance with A.R.S. § 6-942(A)(3), thereby qualifying as exempt from the Department's licensing requirements.

2. Petitioners shall surrender their mortgage banker licenses immediately following entry of this Consent Order and no later than its expiration on December 31, 2009.

3. Petitioners shall advise the Department, in writing, of the location where Petitioners' records shall be kept, upon execution of the Consent Order.

4. Mr. Farkas and TB&W shall comply with all Arizona statutes and rules regulating Arizona mortgage bankers, A.R.S. §§ 6-941, *et seq.*, as well as loan originators, A.R.S. §§ 6-991, *et seq.*

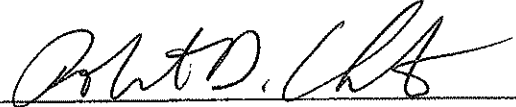
1 5. The provisions of this Consent Order shall be binding upon Taylor, Bean & Whitaker
2 Mortgage Corp. and Mr. Farkas, their employees, agents and other persons participating in the conduct
3 of the affairs of Petitioners.

4 6. The provisions of this Consent Order shall be binding upon Petitioners, and resolves the
5 Notice of Hearing and Cease and Desist Order, subject to Petitioners' compliance with the requirements
6 of this Consent Order. If Petitioners fail to comply with this Consent Order, the Department shall re-
7 institute the underlying action.

8 7. This Consent Order shall become effective upon service, and shall remain effective and
9 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated, or
10 set aside.

11 SO ORDERED this 8 day of December, 2009.

12 Thomas L. Wood
13 Acting Superintendent of Financial Institutions

14 
15 Robert D. Charlton
16 Assistant Superintendent of Financial Institutions

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18 CONSENT TO ENTRY OF ORDER

19 1. Petitioners acknowledge that they have been served with a copy of the foregoing
20 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are
21 aware of their right to an administrative hearing in this matter, and have waived the same.

22 2. Petitioners consent to the jurisdiction of the Superintendent and consent to the entry of
23 the foregoing Findings of Fact, Conclusions of Law, and Order.

24 3. Petitioners state that no promise of any kind or nature has been made to induce them to
25 consent to the entry of this Order, and that they have done so voluntarily.
26

4. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

5. Jeffery Cavender, Esq., on behalf of Taylor, Bean & Whitaker Mortgage Corp., represents that he is the company's general counsel and that, as such, has been authorized by Taylor, Bean & Whitaker Mortgage Corp. to consent to the entry of this Consent Order on its behalf.

6. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the validity of this Consent Order.

DATED this 24 day of November, 2009.

By Lee B. Farkas, Individually

DATED this 30th day of November, 2009.

By Jeffery Cavender
Jeffery Cavender, Esq., General Counsel for
Taylor, Bean & Whitaker Mortgage Corp.

ORIGINAL of the foregoing filed
this 8th day of December, 2009 with:

Thomas L. Wood
Acting Superintendent of Financial Institutions
Arizona Department of Financial Institutions
Attention: Susan Longo
2910 North 44th Street, Suite 310
Phoenix, AZ 85018

1 COPY of the foregoing mailed or
hand-delivered this 8th day of December, 2009 to:

2 Lewis D. Kowal, Administrative Law Judge
3 Office of Administrative Hearings
1400 West Washington Street, Suite 101
4 Phoenix, AZ 85007


5 Erin O. Gallagher, Assistant Attorney General
Office of the Attorney General
6 1275 West Washington Street
Phoenix, AZ 85007

7 Robert Charlton, Assistant Superintendent
8 Judith Moss, Senior Examiner
Arizona Department of Financial Institutions
9 2910 North 44th Street, Suite 310
Phoenix, AZ 85018

10 COPY of the foregoing mailed Certified,
11 Return Receipt this 8th day of December, 2009 to:

12 Ashley L. Taylor, Jr., Esq.
Jesse K. Martin, Esq.
13 Troutman Sanders LLP
1001 Haxall Point
14 P.O. Box 1122 (23218-1122)
Richmond, VA 23219
15 Attorneys for Petitioner Taylor, Bean & Whitaker Mortgage Corp.

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